IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5285 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANKARLAL NATHALAL SOLANKI - Applicant(s)
Versus
SURJITSINH JASVANTSINH SALUJA & 1 - Respondent(s)

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Appearance :
MR IM MUNSHI for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
Shri KT Dave, Addl. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/08/2007
ORAL JUDGMENT

Rule. Shri KT Dave, learned APP waives service of Rule on behalf of respondent State. Though served nobody appears on behalf of respondent No.1, original-complainant. This

Court has already passed order dated 9th July 2007 issuing Notice for final disposal.

2. By way of this application under Section 482 of the Code of Criminal Procedure, the applicant, original-accused has prayed for an appropriate order to quash and set aside criminal proceedings being Criminal Case No. 41 of 2002 pending in the Court of learned Metropolitan Magistrate, Court No.2, Ahmedabad and also order passed by learned Trial Court issuing process/summons against the petitioner under Section 420 of the Indian Penal Code.

3. It appears from the record that the respondent No.1, original-complainant has filed one complaint against the petitioner for the offences under Section 138 of The Negotiable Instruments Act [hereinafter referred to as 'the Act'] in the year 1997 being Criminal Case No. 762/97 which came to be dismissed for default on 10th January 2001 as the respondent No.1 herein

original-complainant did not remain present before the trial Court. That thereafter the respondent No.1 herein original-complainant has filed the impugned complaint being Criminal Case No. 41/2002 against the petitioner in the Court of learned Metropolitan Magistrate, Court No.2, Ahmedabad for offences under Section 420 of the IPC alleging inter alia that after filing of the aforesaid Criminal Case No. 762/97 by the respondent No.1 herein against the petitioner for the offences under Section 138 of the Act and having served with the summons, the petitioner gave promises and assurances to him that he will make payment of cheque in question and therefore the petitioner did not remain present before the learned Trial Court and the said complaint came to be dismissed for default and inspite of the aforesaid assurances the petitioner has not made payment of the cheque amount and thus the petitioner has committed offence under Section 420 of the IPC. The learned Metropolitan Magistrate, Court No.2 issued the summons/process

upon the petitioner for the aforesaid offence and therefore the petitioner has preferred the present application under Section 482 of the Code of Criminal Procedure to quash and set aside the impugned complaint being Criminal Case No. 41/2002 and the order passed by the learned Metropolitan Magistrate, Court No.2, Ahmedabad issuing process against the petitioner in the aforesaid complaint.

4. Shri IM Munshi, learned advocate appearing for the applicant has submitted that on bare reading of the complaint no case is made out against the petitioner for the offence under Section 420 of the IPC. It is submitted that in fact the petitioner had filed one Enquiry Case No. 22/2000 in the Court of learned Metropolitan Magistrate, Court No.2 at Ahmedabad which is sent for enquiry under Section 202 of the Cr.P.C., and as a counter-blast the respondent No.1 has filed the impugned complaint. It is further submitted by him that there was no such assurance given by

the petitioner as alleged and as the complaint filed by the respondent No.1 under Section 138 of the Act is dismissed for default the respondent No.1 has filed the impugned complaint which is nothing but an abuse of process of law. It is therefore requested to quash and set aside the aforesaid complaint in exercise of powers under Section 482 of the Cr.P.C.

5. Shri KT Dave, learned APP has requested to pass appropriate order considering the averments and allegations in the complaint.

6. It is not in dispute that the complaint was filed by the respondent No.1 against the petitioner for the offences under Section 138 of The Negotiable Instruments Act in the year 1997 which came to be dismissed for default on 10th January 2001. It is also not in dispute that the petitioner has filed one criminal case being Enquiry Case No. 22/2000 against the respondent No.1 herein in the Court of learned Metropolitan

Magistrate, Court No.2, Ahmedabad for the offences under Section 406, 468, 471 of the IPC in which the learned Trial Court has directed enquiry under Section 202 of the Cr.P.C. On bare reading of the complaint and taking the same at its face value no case is made out against the petitioner for the offence under Section 420 of the IPC. The complaint filed by the respondent No.1 against the petitioner for the offence under Section 138 of the Act was dismissed for default in the year 2001 and even considering the complaint filed by the petitioner against the respondent No.1 referred to hereinabove the present complaint seems to be a counter-blast. Under the circumstances to continue the criminal proceedings by way of aforesaid criminal case would be abuse of process of law and unnecessary harassment to the petitioner. No case is made out against the petitioner for the offence under Section 420 of the IPC in the complaint and this is a fit case to exercise powers under Section 482 of the Code of Criminal Procedure.

7. For the reasons stated above, the petition succeeds. The complaint being Criminal Case No. 41 of 2002 pending in the Court of learned Metropolitan Magistrate, Court No.2, Ahmedabad against the petitioner for the offence under Section 420 of the IPC is hereby quashed and set aside. Rule is made absolute accordingly. Direct service is permitted.

[M.R. Shah, J.]

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